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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536

FILE:

Office: Miami

Date: OCT 1 - 2003

IN RE: Applicant:

APPLICATION: Application for Permanent Residence Pursuant to Section 1 of the Cuban Adjustment Act of
November 2, 1966 (P.L. 89-732)

ON BEHALF OF APPLICANT:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, who certified his decision to the Administrative Appeals Office (AAO) for review. The AAO affirmed the decision of the acting district director to deny the application. The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be withdrawn, and the case will be remanded to the acting district director for further action.

The applicant is a native and citizen of Venezuela who filed this application for adjustment of status to that of a lawful permanent resident under section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966.

The acting district director denied the application after determining that the applicant was not eligible for adjustment of status under section 1 of the CAA because she failed to establish that she is a citizen of Cuba.

Upon review of the record of proceeding, the AAO determined that although the applicant and her father presented themselves to the Cuban Consulate in Caracas, Venezuela, and the applicant obtained a Cuban birth certificate, Venezuela did not recognize dual citizenship, and the record was devoid of evidence establishing that the applicant had expressly given up her right to Venezuelan citizenship. The AAO cited Article 29 of the Constitution of the Republic of Cuba that reads, in part:

Those considered Cuban citizens by birth are:

(c) those born outside of Cuba of Cuban father or mother, provided that they comply with the formalities of the law.

On October 15, 2002, the AAO affirmed the acting district director's finding that the applicant is a citizen of Venezuela and, therefore, did not meet the requirements of section 1 of the CAA.

On motion, counsel asserts that the case on which the AAO based its decision is no longer good Venezuelan law as the Venezuelan Constitution has since been amended regarding dual nationality. He submits a copy of the Venezuelan Constitution, amended in 1999, which states, in part:

Article 34: The Venezuelan nationality is not lost upon electing or acquiring another nationality.

The applicant, in this case, claimed that that she is a Cuban citizen, pursuant to Article 29 of the Cuban Constitution, because one of her parent is Cuban, and she has complied with the formalities stipulated by Cuban law. She has submitted a birth certificate, issued by the Cuban government, to establish her claim.

Based on the revised 1999 Venezuelan Constitution, and evidence that the applicant has complied with the formalities stipulated by Article 29 of the Cuban Constitution, it is concluded that the applicant has established that she is a citizen of Cuba. She is, therefore, not precluded from adjustment of status under section 1 of the CAA if the applicant was inspected and admitted into the United States subsequent to January 1, 1959, has been physically present in the United States for at least one year prior to the filing of the application, is eligible to receive an immigrant visa, and is admissible to the United States for permanent residence.

8 C.F.R. § 245.2(a)(2)(ii) provides, in part:

An application for the benefits of section 1 of the Act of November 2, 1966 is not properly filed unless the applicant was inspected and admitted or paroled into the United States subsequent to January 1, 1959. An applicant is ineligible for the benefits of the Act of November 2, 1966 unless he or she has been physically present in the United States for one year.

Although the application for permanent residence (Form I-485) reflects that the applicant entered the United States on July 14, 2000, the Form G-325A (Biographic Information), contained in the record of proceeding, shows that the applicant claimed to have been employed in Caracas, Venezuela, as "President" of "Respaldo Seguridad y Vigilancia" from June 1997 to the present (note that the G-325A was signed on July 13, 2001), and was also employed in Caracas, Venezuela as "Consultant" for "Security Guard Service," from June 1992 to the present.

The record reflects that the applicant filed her application for permanent residence on July 23, 2001. The record, however, is devoid of evidence that the applicant resided in the United

States and was physically present for one year at the time of filing the adjustment application as required. The acting district director, however, did not address the applicant's physical presence in the United States, nor is there evidence in the record that the applicant was requested to submit evidence to establish that she was physically present in the United States for one year prior to the filing of the application.

Accordingly, the case will be remanded so that the acting district director may accord the applicant an opportunity to submit additional evidence. The director shall enter a new decision which, if adverse to the applicant, is to be certified to the AAO for review.

ORDER: The AAO's decision dated October 15, 2002 is withdrawn. The case is remanded for appropriate action consistent with the above discussion and entry of a new decision.